

TITLE 22. EMPLOYMENT TRAINING PANEL

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to amend Section 4400(ee) and repeal Sections 4407, 4425 and 4441.5 in Title 22 of the California Code of Regulations. The proposed amendment would revise the definition of “frontline worker” to conform to state and federal labor law. The three proposed repeals would remove unnecessary or outdated procedures. The Initial Statement of Reasons and Express Text of the proposed action is accessible through the *Pending Regulatory Actions* link on the Home Page of the ETP website (www.etp.ca.gov).

AUTHORITY AND REFERENCE

The Panel’s rulemaking authority is set forth at Section 10205(m) of the Unemployment Insurance (UI) Code. The proposed repeals would affect the Panel’s implementation of UI Code Sections 10200(a), 10204(b), 10205, and 10209(b).

INFORMATIVE DIGEST

Amend Section 4400(ee) – Frontline Worker: UI Code Section 10200(a) defines “frontline worker” as one who directly produces or delivers goods or services. At Subsections 4400(ee)(1) and (3), the existing regulation establishes two ways to determine when a worker is “frontline” by referencing state and federal labor law overtime compensation exemption standards. The standards in subsections (1) and (3) will be amended to conform to state and federal labor law. Subsection (3) will also be modified to clarify the Panel’s authority to make a case-by-case determination of frontline worker status per applicable labor law and guidelines. The phrase “directly producing goods or delivering services” will be removed from subsections (1), (2) and (3) to avoid repeating the statute’s language. Minor revisions will be made to clarify subsection (4)’s description of entrepreneurial training.

Repeal Section 4407 – Small Business Projects (Delegation to WIBs): UI Code Sections 10204(b) and 10205(f) permit the Panel to enter special contracts with Workforce Investment Boards (WIBs). The existing regulation attempts to make these provisions more specific, but omits or misconstrues essential components of the statutory scheme. For example, Section 4407 confers authority on WIBs to approve “projects” which implies authority to disburse from the Employment Training Fund for various type of training. In fact, UI Code Section 10204(b) only delegates authority to approve “contracts” for new hire training – in other words, subcontracts for a particular type of training. Furthermore, Section 4407 is unnecessary because the Panel may contract with WIBs under a Multiple Employer Contract (MEC), which affords greater flexibility to both parties.

Repeal Section 4425 – Structured On-Site Training: UI Code Section 10209(b) details on-the-job training requirements. The existing regulation sets parameters for Structured On-Site Training (SOST), especially as to the production of goods or delivery of services during training. However, an ETP-authorized report from the California State University in Northridge identified many shortcomings in the SOST program. As a result, the Panel imposed a moratorium on SOST funding in August 2002, which remains to this day. Since SOST is no longer being funded, nor is it likely to be funded in the foreseeable future, Section 4425 is no longer necessary. If the Panel decides to revive the SOST program, it would establish new regulatory guidelines that address the identified shortcomings.

Repeal Section 4441.5 – Training Schedule: UI Code Section 10205(c) permits the Panel to solicit proposals from and contract with employers to fund employment training projects. The existing regulation requires a “detailed roll out schedule” for the first six months that must be available at the start of training, and updated throughout the project, subject to ETP monitoring. Staff’s experience is that a six-month schedule is not always practical at the start of training due to so many uncertainties and unknowns at that stage. In short, Section 4441.5 is confusing because it conflicts with actual practice; and is unnecessary, because staff guides contractors on creating and maintaining a realistic training schedule as changing needs demand. As such, this regulation is no longer necessary.

FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures required by Section 11346.2 of the Government Code.

A. Fiscal Impact. The Panel has made an initial determination that the proposed actions do not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Furthermore, these actions do not impose non-discretionary costs or savings to any local agency; nor do they impact federal funding for the State.

The Panel has made an initial determination that the proposed actions do not impose costs or savings to any State agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code. Furthermore, there are no fiscal impact disclosures required by State Administrative Manual sections 6600-6670.

B. Cost Impacts. The Panel is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The same determination applies to housing costs. These actions simply clarify the Panel’s definition of Job Creation and thus, there would be no costs associated with these actions.

C. Adverse Impact on Business. The Panel has made an initial determination that the proposed actions do not have any significant, statewide adverse economic impact directly affecting business, including the ability to compete.

D. Effect on Small Business. The Panel has determined that the proposed actions will not affect small businesses unless they seek training funds. Since this action would clarify and simplify the Panel's standards for reviewing and funding training proposals, this would be a positive effect.

E. Effect on Jobs and Business Expansion. The Panel has made an initial determination that the proposed actions would not create or eliminate jobs in California. Nor would they create new businesses or eliminate existing businesses in California. The Panel has made an initial determination that these actions would not directly affect the expansion of businesses currently operating in California.

F. Imposed Mandate. The Panel has made an initial determination that the proposed actions do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES

The Panel has made an initial determination that there are no reasonable alternatives to the proposed actions that would be more effective in carrying out their purpose, or that would be as effective and less burdensome to affected private parties. Interested persons are welcome to identify reasonable alternatives during the written comment period.

WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on December 1, 2006 and ending at 5:00 p.m. on January 15, 2007. Any interested person, or his or her authorized representative, may present written comments on the proposed actions within that time period. Comments should be sent to:

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PUBLIC HEARING

A public hearing will not be held unless one is requested by an interested person, or his or her authorized representative. The request must be submitted in writing to the address shown above no later than 5:00 p.m. on the fifteenth day before the written comment period ends. The request should identify the specific regulatory action for which the hearing is requested.

MODIFICATIONS

Modifications to the text of the proposed regulatory actions may be made after the public comment period. If so, they will be posted on the ETP Website at www.etp.ca.gov. They will also be available upon request to the address shown above. Said modifications will be open to public comment for at least 15 days before their adoption, as noticed on the ETP Website.

AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed actions, and has compiled all information on which the actions were based. This statement, along with the express text of the proposed actions and the written information on which they were based, are available for inspection at the address shown above.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the address shown above. This Notice of Proposed Rulemaking is posted on the ETP Website at www.etp.ca.gov. The Initial Statement of Reasons and the express text of the proposed actions are also posted on the ETP Website.

CONTACT PERSONS

Requests for copies of the express text of the proposed actions and the modified text (if any), and the Initial Statement of Reasons, should be directed to the address shown above. In addition, the “rulemaking file” of written information on which the proposed actions are based is available for inspection upon request.